

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2729 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHANDIBEN RAMANBHAI RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/12/1999

ORAL JUDGEMENT

1. The detainee came to be detained by virtue of an order passed on 14th March 1999 by Commissioner of Police, Surat city, Surat in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The detaining authority in the grounds of detention took into consideration one registered offence against the detainee and two statements

of anonymous witnesses whose identity has not been disclosed u/s 9[2] of the PASA Act. The authority has satisfied itself that, in view of the statements of the anonymous witnesses, the detainee's activity has resulted into disruption of public order and therefore, it is necessary to exercise powers u/s 9[2] of the PASA Act. Therefore, after taking into consideration the possibility of resorting to other less drastic remedy, the detaining authority concluded that, in order to prevent the detainee immediately from pursuing his illegal activities, detention under the PASA was the only remedy available that can be resorted to and the order came to be passed.

2. The detainee has approached this Court with this petition under Article 226 of the Constitution of India challenging the order of detention on various grounds. The main ground is that although in the representation dated 1st May 1999 made by an advocate for the detainee demanding translated version of all the papers either in Hindi language or in Marathi language, which is the mother tongue of the detainee, the detaining authority did not supply such documents to the detainee. This has affected the right of the detainee of making effective representation guaranteed by the Constitution of India.

3. Mr. Kapadia, learned advocate for the detainee has restricted his arguments to the above ground only. He submitted that the detainee had specifically stated that he is staying in Surat for about 10 years and has learnt to speak Gujarati language to some extent and he can even put his signature also to some extent in Gujarati language. He does not know how to read or write in Gujarati. Despite this, the translated version is not supplied to the detainee, which has resulted into infringement of the rights of the detainee of making an effective representation guaranteed under Article 22[5] of the Constitution of India. He submitted that, on this ground, the petition deserves to be allowed. He pressed into service the decision of a Division Bench of this Court in the case of Mansing Tomar v/s State of Gujarat as reported in 1989 [2] GLH 471 and urged for allowing the petition.

4. Mr.D.P.Joshi, learned AGP has opposed this petition. He submitted that it is true that the representation was received demanding the translated version of the papers either in Hindi language or in Marathi language. He also conceded to the fact after verifying it from the file that was submitted to him by an officer from the department, that copies of translated

version have in fact not been supplied to the detainee. He however brought to the notice of this Court an endorsement made by the detainee below the order of detention on 17/3/99 when he came to be detained, to the effect that he has studied upto Std. IVth in Marathi medium, the documents furnished to him have been explained to him in Marathi language, but he stated further that he knows how to speak and understand Gujarati language. In this view of the matter, it was urged by Mr. Joshi that the petition may be dismissed, because this ground would not be available to the detainee.

5. In view of the rival side contentions, the factual part remains undisputed that the detainee, through a representation made by his advocate demanded for the copies of the translated version of the papers either in Hindi language or Marathi language, the language which he knew. Reliance is placed only on the endorsement made by the detainee. If that endorsement is seen, he says that his mother tongue is Marathi. He has studied upto Std. IVth in that language. He is staying in Surat for about 10 years and he understands Gujarati language, but he nowhere states that he knows how to read or write Gujarati language. On the contrary, all that he states is that he knows how to sign in Gujarati language. Meaning thereby, that he does not know Gujarati language well. This indicates that his knowledge of Gujarati language cannot be considered as sufficient to enable him to understand the papers given to him and thereafter make a representation.

6. In view of the decision of this High Court rendered by the Division Bench in case of Mansing Tomar [supra], it was held that the grounds of detention and other materials in Gujarati language in serving on the detainee who did not understand the said language, affected the right of making an adequate and effective representation under Article 22[5] of the Constitution of India. Mere explaining grounds and other material in the language understood by the detainee was held to be not sufficient compliance.

7. In that view of the matter, the detainee's right of making an effective representation is infringed and the order of detention and continued detention would therefore stand vitiated. The petition therefore deserves to be allowed.

8. The petition is allowed. The impugned order of detention passed by the Commissioner of Police, Surat

city, Surat on 14th of March, 1999 in respect of the
detenue - Suresh Gangadhar Patil, is hereby set aside.
The detenue be set at liberty forthwith, if not required
to be detained in custody for any other case. Rule is
made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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